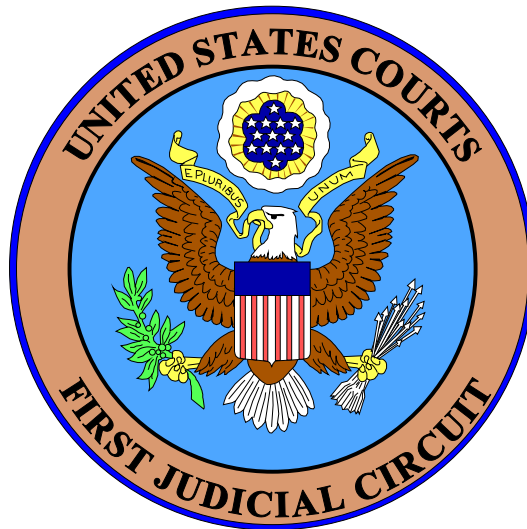


# **BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT**

## **PART VIII OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE WITH CORRESPONDING FIRST CIRCUIT BAP LOCAL RULES**



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## JUDGES OF THE PANEL

Hon. James B. Haines, Jr., Chief Judge

Hon. Arthur N. Votolato, Bankruptcy Judge

Hon. Enrique S. Lamoutte, Bankruptcy Judge

Hon. Sara E. de Jesús, Bankruptcy Judge

Hon. William C. Hillman, Bankruptcy Judge

Hon. Joan N. Feeney, Bankruptcy Judge

Hon. Henry J. Boroff, Bankruptcy Judge

Hon. J. Michael Deasy, Bankruptcy Judge

Hon. Louis H. Kornreich, Bankruptcy Judge

Hon. Brian K. Tester, Bankruptcy Judge

Hon. Frank J. Bailey, Bankruptcy Judge

## OFFICERS OF THE PANEL

Mary P. Sharon, Clerk of Court

Gwen May, Judicial Law Clerk

\_\_\_\_\_, Staff Attorney

Ann Williams, Case Manager

## **AMENDMENTS**

### **May 2010**

This edition of the rules supercedes the January 2009 amendments.



**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT**

**Part VIII of the Federal Rules of Bankruptcy Procedure with  
Corresponding First Circuit BAP Local Rules**

***Fed R. Bankr. P. 8001  
Manner of Taking Appeal; Voluntary Dismissal***

*(a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.*

*(b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.*

*(c) VOLUNTARY DISMISSAL.*

*(1) Before docketing. If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.*

*(2) After docketing. If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.*

*(d) [Abrogated]*

*(e) ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL; WITHDRAWAL OF ELECTION.*

*(1) Separate writing for election. An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).*

*(2) Withdrawal of election. A request to withdraw the election may be filed only by written stipulation of all the parties to the appeal or their attorneys of record. Upon such a stipulation, the district court may either transfer the appeal to the bankruptcy appellate panel or retain the appeal in the district court.*

*(f) CERTIFICATION FOR DIRECT APPEAL TO COURT OF APPEALS*

*(1) Timely appeal required. A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.*

*(2) Court where certification made and filed. A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter is pending in a district court or bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3).*

*(A) Certification by court on request or court's own initiative.*

*(i) Before docketing or grant of leave to appeal. Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.*

*(ii) After docketing or grant of leave to appeal. Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.*

*(B) Certification by all appellants and appellees acting jointly. A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.*

*(3) Request for certification; filing; service; contents.*

*(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court in which the matter is pending.*

*(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.*

*(C) A request for certification shall include the following:*

*(I) the facts necessary to understand the question presented;*

*(ii) the question itself;*

*(iii) the relief sought;*

*(iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and*

*(v) an attached copy of the judgment, order, or decree complained of and any related opinion or memorandum.*

*(D) A party may file a response to a request for certification or a cross request within 10 days after the notice of the request is served, or another time fixed by the court.*

*(E) Rule 9014 does not govern a request, cross request, or any response. The matter shall be submitted without oral argument unless the court otherwise directs.*

*(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.*

*(4) Certification on court's own initiative.*

*(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.*

*(B) A party may file a supplementary short statement of the basis for certification within 10 days after the certification.*

*(5) Duties of parties after certification. A petition for permission to appeal in accordance with F. R. App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1).*

#### **1st Cir. BAP L.R. 8001-1 Title and Effective Date**

**(a) Title.** These local rules, promulgated under Fed. R. Bankr. P. 8018, shall govern practice before the United States Bankruptcy Appellate Panel for the First Circuit (the “BAP” or the “Panel”) and shall be known as the First Circuit BAP Local Rules. They shall be cited as “1st Cir. BAP L.R. \_\_\_\_.”

**(b) Effective Date.** These rules shall take effect on May 13, 2010, with respect to pending cases and those filed thereafter insofar as is just and practicable.

#### **1st Cir. BAP L.R. 8001-2 Notice of Appeal**

**(a) Filing Requirements.** A notice of appeal, substantially in conformance with Official Bankruptcy Form 17, shall be filed with the appropriate bankruptcy court with the filing fee in the total amount provided in 28 U.S.C. § 1930(c) and the Bankruptcy Court Miscellaneous Fee Schedule promulgated pursuant to 28 U.S.C. § 1930(b). The appellant shall attach to the notice of appeal a copy of the bankruptcy court judgment, order, or decree from which the appeal is taken.

(b) **Separate Notices.** A separate notice of appeal and filing fee shall be filed for each bankruptcy court judgment, order, or decree being appealed.

(c) **Consequence of Noncompliance.** The BAP may dismiss an appeal for failure to cure any defect in the notice of appeal within the time period prescribed by the BAP.

**1st Cir. BAP L.R. 8001-3**  
**Voluntary Dismissal of Appeal**

If an appeal has been docketed with the BAP, it may be dismissed by the parties in the manner set forth in Fed. R. Bankr. P. 8001(c)(2). An appeal may also be dismissed on motion of the appellant(s), if no response or opposition is filed within fourteen (14) days after service of the motion, on terms and conditions determined by the BAP.

**RULE 8001-4**  
**Forum for Appeal**

(a) **Appeals to the BAP.** Pursuant to 28 U.S.C. § 158(c)(1), all appeals from bankruptcy courts are to the BAP, unless one of the parties to the appeal files an election to have the district court hear the appeal as set forth in subsection (b) of this Rule.

(b) **Election to Have District Court Hear Appeal.**

(1) **Appellant Election.** An appellant electing to have the district court hear the appeal shall file with the bankruptcy court, concurrently with the notice of appeal, a separate written statement of election to have the district court hear the appeal. Failure to elect at the time of filing the notice of appeal will result in a waiver of the right of election under 28 U.S.C. § 158(c)(1) and Fed. R. Bankr. P. 8001(e). The statement of election shall substantially conform with 1st Cir. BAP L.R. Official Form 1.

(2) **Appellee Election.** An appellee electing to have the district court hear the appeal shall file with the BAP, within thirty (30) days from service of the notice of appeal, a separate written statement of election to have the district court hear the appeal. Failure to elect within the time provided will result in a waiver of the right of election under 28 U.S.C. § 158(c)(1) and Fed. R. Bankr. P. 8001(e). The statement of election shall substantially conform with 1st Cir. BAP L.R. Official Form 2.

(A) **Waiver.** Unless the Panel orders otherwise, the filing of any document(s) (other than a notice of appearance) by an appellee with the BAP or with the bankruptcy court in connection with an appeal prior to filing a statement of election will result in a waiver of any time remaining in the thirty (30) day election period.

(c) **Procedure Upon Election.** Upon an effective election by an appellant, the bankruptcy court

clerk shall direct the appeal to the district court in accordance with any established rules in the district. Upon an effective election by an appellee, the BAP Clerk shall transfer to the bankruptcy court all pleadings filed with the BAP and a certified copy of the BAP docket.

**(d) Challenge(s) to Election.** Any challenge to an election shall be brought by motion within fourteen (14) days after an election is filed. The motion shall be filed with the BAP unless the bankruptcy court clerk or the BAP Clerk has transmitted the appeal to the district court in which case the motion shall be filed with the district court.

**(e) Transfer.** The BAP may transfer an appeal to the district court to further the interests of justice or for any other reason the BAP deems appropriate including circumstances where a timely statement of election has been filed in a related appeal.

**(f) Election and Motion for Leave to Appeal.** If an appellant moves for leave to appeal pursuant to Fed. R. Bankr. P. 8003, and fails to file a separate notice of appeal concurrently with filing the motion for leave, the motion for leave shall be treated as if it were a notice of appeal for purposes of calculating the time period for filing an election.

***Fed. R. Bankr. P. 8002.***  
***Time for Filing Notice of Appeal***

*(a) FOURTEEN-DAY PERIOD. The notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.*

*(b) EFFECT OF MOTION ON TIME FOR APPEAL. If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:*

- (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;*
- (2) to alter or amend the judgment under Rule 9023;*
- (3) for a new trial under Rule 9023; or*
- (4) for relief under Rule 9024 if the motion is filed no later than 14 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of*

*the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, of appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.*

**(c) EXTENSION OF TIME FOR APPEAL**

*(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party, unless the judgment, order, or decree appealed from:*

*(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;*

*(B) authorizes the sale or lease of property or the use of cash collateral under § 363;*

*(C) authorizes the obtaining of credit under § 364;*

*(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;*

*(E) approves a disclosure statement under § 1125; or*

*(F) confirms a Plan under § 943, § 1129, § 1225, or § 1325 of the Code.*

*(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 21 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 14 days from the date of entry of the order granting the motion, whichever is later.*

**Fed. R. Bankr. P. 8003**

***Leave to Appeal***

*(a) CONTENT OF MOTION; ANSWER. A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion, an adverse party may file with the clerk an answer in opposition.*

*(b) TRANSMITTAL; DETERMINATION OF MOTION. The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.*

*(c) APPEAL IMPROPERLY TAKEN REGARDED AS A MOTION FOR LEAVE TO APPEAL. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny*

*leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.*

**1st Cir. BAP L.R. 8003-1**  
**Motion for Leave to File Interlocutory Appeal**

**(a) Motion Required.** Parties seeking leave to appeal an interlocutory judgment, order, or decree shall file in the bankruptcy court a motion, containing the matters set forth in Fed. R. Bankr. P. 8003(a), together with the notice of appeal.

**(b) Response.** Unless the BAP orders otherwise, any party opposing a motion for leave to appeal an interlocutory judgment, order, or decree shall file its response with the bankruptcy court within fourteen (14) days of service of the motion. Unless the BAP orders otherwise, the filing of any document(s) prior to making the election, including a response to the motion for leave to appeal, will result in a waiver of any time remaining in the thirty (30) day election period. See 1st Cir. BAP L.R. 8001- 4(b)(2)(A).

**(c) Clerk to Transmit.** Unless there is an election to have the district court hear the appeal, the bankruptcy court clerk shall forward the motion and any responses to the BAP for decision.

**(d) Decision on Motion.** The BAP may render its decision on the motion with or without a hearing. Upon the entry of the BAP decision or order, the BAP Clerk shall serve the same on the parties and the bankruptcy court clerk.

***Fed.R. Bankr. P. 8004.***  
***Service of the Notice of Appeal***

*The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing. The clerk shall forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit such notice shall not affect the validity of the appeal.*

***Fed R. Bankr. P. 8005***  
***Stay Pending Appeal***

*A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the*

*district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.*

**1st Cir. BAP L.R. 8005-1**  
**Stay Pending Appeal**

**(a) Appendix.** In addition to the requirements set forth in Fed. R. Bankr. P. 8005, a motion for stay pending appeal shall be accompanied by an appendix containing the following:

- (1)** a copy of the bankruptcy court's order denying a motion for stay or a copy of the transcript of the bankruptcy court's hearing on the motion, unless the motion was not first presented to the bankruptcy court; and
- (2)** a copy of any document(s) filed in the bankruptcy court that is relevant to the motion for stay.

***Fed. R. Bankr. P. 8006***  
***Record and Issues on Appeal***

*Within 14 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 14 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 14 days of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of*



*the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.*

**1st Cir. BAP L.R. 8006-1**  
**Record on Appeal**

**(a) Consequence of Noncompliance.** Failure to include in the record on appeal all of the items listed in Fed. R. Bankr. P. 8006 may result in dismissal of the appeal.

**(b) Copy of Record on Appeal.** Upon request of the BAP, a party shall provide four (4) copies of its designation and each item designated to the BAP.

**(c) Challenge(s) to Designation.** A party challenging a designation shall file a motion with the BAP within fourteen (14) days of the filing of the designation.

***Fed. R. Bankr. P. 8007***  
***Completion and Transmission of the Record; Docketing of the Appeal***

*(a) DUTY OF REPORTER TO PREPARE AND FILE TRANSCRIPT. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.*

*(b) DUTY OF CLERK TO TRANSMIT COPY OF RECORD; DOCKETING OF APPEAL. When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.*

*(c) RECORD FOR PRELIMINARY HEARING. If prior to the time the record is transmitted a*

*party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the parts of the record as any party to the appeal shall designate.*

**1st Cir. BAP L.R. 8007-1**  
**Docketing of Appeal; Completion of the Record**

**(a) Preliminary Transmission.** Promptly after a notice of appeal is filed, the bankruptcy court clerk shall transmit to the BAP Clerk a copy of the following:

- (1) a certified copy of the dockets in the main case and adversary proceeding, if applicable;
- (2) the notice of appeal with the attached bankruptcy court judgment, order, or decree being appealed;
- (3) any motion to extend time to file the notice of appeal and the order disposing of the motion;
- (4) any written findings and conclusions or opinion of the bankruptcy court; and
- (5) any post-judgment motion regarding the appealed judgment, order, or decree and any order disposing of the motion.

**(b) Supplemental Transmission.** If after the bankruptcy court clerk has transmitted the preliminary transmission, a motion regarding the appealed judgment, order, or decree is filed, the bankruptcy court clerk promptly shall transmit to the BAP Clerk a copy of the motion, any order disposing of the motion, and the related docket entries. The bankruptcy court clerk shall transmit to the BAP Clerk a copy of the transcript immediately after it is filed.

**(c) Completion of the Record.** After the parties have completed the record pursuant to the deadlines and requirements set forth in Fed. R. Bankr. P. 8006, the bankruptcy court clerk shall promptly transmit the completed record to the BAP.

**(d) Docketing of Appeal.** An appeal is deemed to be docketed at the BAP, for purposes of Fed. R. Bankr. P. 8007(b), upon the docketing of the completed record received from the bankruptcy court clerk. The BAP Clerk shall give notice promptly to all parties of the date of the docketing of the appeal.

***Fed. R. Bankr. P. 8008***  
***Filing and Service***

*(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.*

*(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.*

*(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.*

*(d) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.*

#### **1st Cir. BAP L.R. 8008-1 Filing and Service**

**(a) Filing.** Unless the BAP orders otherwise, any document(s), other than briefs and appendices, which are not filed electronically are timely filed if received in the office of the BAP Clerk by 5:00 p.m. All documents filed shall be received and docketed by the BAP Clerk, whether or not timely filed. The BAP has established procedures for electronic filing of documents, with certain exceptions, as set forth in General Order No. 2 and any amendments to that order. General Order No. 2 is posted on the website at <http://www.bap1.uscourts.gov>. Upon request, the BAP Clerk will provide a hard copy of General Order No. 2.

**(b) Translation(s) Required.** The BAP will disregard any document(s) not in the English language unless a translation(s) is furnished. Whenever a party cites to a statute, rule, or regulation of the Commonwealth of Puerto Rico (“Puerto Rico”), an opinion of the Supreme Court of Puerto Rico, or other court of Puerto Rico in an appendix, brief, or at oral argument and the cited authority is not available in the bound English language volumes, an official, certified, or stipulated translation thereof shall be filed. Translations of pertinent and relevant excerpts of the

foregoing may be accepted if stipulated to by the parties or submitted by a party not less than thirty (30) days before oral argument. Where translations of excerpts are submitted by one party, opposing parties may submit, prior to oral argument, translations of such additional parts as they deem necessary for a proper understanding of the substance of any such statute, rule, regulation, or holding.

**(c) Service.** A party shall serve all other parties to the appeal with an exact copy of any document(s) the party files with the BAP, with the exception of the designated record, and shall attach to the document(s) a signed certificate of service. Although the BAP Clerk shall accept for filing any document(s) lacking a certificate of service, failure to effect service properly or to file such certificate shall be grounds for such sanctions as the BAP may deem appropriate.

**(d) Facsimile Filing.** The BAP Clerk is authorized to accept any document(s) via facsimile if the BAP Clerk determines that the situation presents an emergency or is otherwise compelling. Any document(s) filed by facsimile must be served on all other parties by facsimile or hand delivery within 24 hours after the facsimile filing and may be subject to such procedures for follow-up filing of electronic or hard copies as the BAP Clerk may from time to time specify. Under no circumstances will the BAP Clerk accept for filing by facsimile briefs and appendices. The facsimile number for the BAP is posted on the website at <http://www.bap1.uscourts.gov>.

***Fed. R. Bankr. P. 8009***  
***Briefs and Appendix; Filing and Service***

*(a) BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:*

- (1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.*
- (2) The appellee shall serve and file a brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.*
- (3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.*

*(b) APPENDIX TO BRIEF. If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:*

- (1) The complaint and answer or other equivalent pleadings;*
- (2) Any pretrial order;*
- (3) The judgment, order, or decree from which the appeal is taken;*
- (4) Any other orders relevant to the appeal;*

- (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;*
- (6) Any motion and response on which the court rendered decision;*
- (7) The notice of appeal;*
- (8) The relevant entries in the bankruptcy docket; and*
- (9) The transcript or portion thereof, if so required by a rule of the bankruptcy appellate panel.*

*An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.*

### **1st Cir. BAP L.R. 8009-1** **Time for Filing Briefs and Related Documents**

**(a) Filing of Briefs.** After the BAP docket the appeal pursuant to 1st Cir. BAP L.R. 8007-1(d), it shall issue a briefing order setting forth the deadlines for the filing of all briefs. The briefs shall be filed in the form set forth in 1st Cir. BAP L.R. 8010-1. Briefs filed electronically must be filed on or before the date provided in the briefing order. Briefs not filed electronically may be filed by mail, but the filing is not timely unless the briefs are received by the BAP Clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing.

**(b) Motion for Extension of Time for Filing a Brief.**

**(1) Requirements.** A motion for extension of time for filing a brief shall:

- (A)** be made within the time limit established by the briefing order for the filing of such brief;
- (B)** be supported by a declaration setting forth any previous briefing deadlines; how many extensions of time, if any, have been granted; and whether any previous requests for extensions of time have been denied or denied in part; and
- (C)** briefly recite the reasons why such an extension is necessary and the amount of time requested. Any motion for an extension of time to file a brief on the ground that the transcript is unavailable shall affirmatively show that the transcript was timely ordered and paid for or shall state why the transcript was not ordered.

**(c) Consequence of Failure to File Brief Timely.** An appellant's failure to file a brief timely may result in dismissal of the appeal. An appellee's failure to file a brief timely may result in loss of the right to be heard at oral argument. Briefs filed late shall be accompanied by a motion in accordance with subsection (b) of this Rule. The Panel has no obligation to grant an untimely motion for an extension of time to file a brief or consider a late brief.

**1st Cir. BAP L.R. 8009-2**  
**Appendices**

**(a) Filing of Appendix.** Appendices are due pursuant to the deadlines set forth in the briefing order issued by the BAP. Appellant briefs shall be accompanied by relevant appendices containing the documents set forth in Fed. R. Bankr. P. 8009(b). An appellee may serve and file a supplemental appendix as provided in Fed. R. Bankr. P. 8009(b). In addition to the other items required by Fed. R. Bankr. P. 8009(b), an appellant shall include in its appendix a copy of the judgment, order, or decree from which the appeal is taken, and, where applicable, a copy of the transcript containing the findings of fact and the conclusions of law orally delivered by the bankruptcy court. The parties shall include in their respective appendices all portions of the transcript required for adequate review of the issues before the BAP. Appendices filed electronically must be filed on or before the date provided in the briefing order. Appendices not filed electronically may be filed by mail, but the filing is not timely unless the appendices are received by the BAP Clerk within the time fixed for filing, except that appendices are deemed filed on the day of mailing.

**(b) Format of Appendix.**

**(1) Paper and Margin Standards.** The appendix must be separate from the brief and must be printed on 8½" by 11" white paper with a one-inch margin on all four sides of text.

**(2) Table of Contents and Page Numbering.** Any appendix shall be sequentially paginated and shall contain a table of contents with reference to the numbered pages.

**(3) Covers.** Unless filed electronically, appendix covers shall be white. They shall contain the case caption, substantially in the format set forth in 1st Cir. BAP L.R. Official Forms 1- 4, identify the party submitting the appendix with the name, address, telephone number, fax number, and bar number of any counsel filing the appendix.

**(4) Binding.** Unless filed electronically, any appendix shall be firmly bound along the left margin.

**(5) Relevant Statutes, Rules, and Regulations.** A party may include copies of relevant statutes, rules, and regulations either in the appendix or in pamphlet form.

**(c) Consequence of Noncompliance.** The Panel may reject or disregard any appendices that fail to comply with any of the requirements set forth in this Rule or in Fed. R. Bankr. P. 8009(b).

**Fed. R. Bankr. P. 8010**  
**Form of Briefs; Length**

*(a) FORM OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:*

*(1) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:*

*(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.*

*(B) A statement of the basis of appellate jurisdiction.*

*(C) A statement of the issues presented and the applicable standard of appellate review.*

*(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.*

*(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.*

*(F) A short conclusion stating the precise relief sought.*

*(2) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (1)(A)-(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.*

*(b) REPRODUCTION OF STATUTES, RULES, REGULATIONS, OR SIMILAR MATERIAL. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.*

*(c) LENGTH OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.*

**1st Cir. BAP L.R. 8010-1**  
**Form of Briefs**

(a) **Length.** Unless the BAP orders otherwise, opening briefs may not exceed 30 pages and reply briefs may not exceed 20 pages. Copies may be double sided.

(b) **Content.**

(1) **Briefs.** All briefs shall contain the matter set forth in Fed. R. Bankr. P. 8010(a).

(2) **References to Appendix.** Statements in briefs regarding background facts shall be supported by citation to the appendix. Citations to documents in the appendix shall be to pages of the appendix (e.g., App. at 27, or Appellee App. at 14) rather than to page numbering that appear on original papers.

(3) **Statement of Related Cases.** Any party filing a brief shall file a statement, attached to the last page of its brief and substantially in the form of 1st Cir. BAP L.R. Official Form 3, indicating whether the party knows of a related case pending before the Supreme Court of the United States or any United States Court of Appeals, United States District Court, or BAP.

(A) **Related Case.** A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal.

(4) **Statement of Interested Parties.** Any party filing a brief, other than governmental parties, shall file a statement, attached to the last page of its brief and substantially in the form of 1st Cir. BAP L.R. Official Form 4, indicating whether the party knows of any interested party who is not listed in the notice of appeal.

(A) **Interested Party.** An “interested party” includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal. When a corporation is a party to an appeal, the Statement of Interested Parties shall identify any parent corporation and any publicly held corporation that owns 10 per cent or more of its stock or state that there is no such corporation. An individual listing is not necessary if a large group of persons or firms can be specified by a generic description. The Statement of Interested Parties shall include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance with the BAP.



(c) **Format.**

(1) **Paper and Margins Standard.** Briefs shall be printed on 8½" by 11" paper with a one-inch margin on all four sides of text, including pagination and footnotes.

(2) **Line Spacing and Type.** Briefs shall use the following line format: single spacing for the caption and footnotes, and double-spacing for the main text. All printed matter shall appear in at least 12 point type.

(3) **Page Numbering.** All pages of briefs shall be sequentially numbered.

(4) **Table of Contents.** Briefs shall contain a table of contents.

(5) **Covers.**

(A) **Form.** The covers of all briefs shall provide the following information, substantially in the format set forth in 1st Cir. BAP L.R. Official Forms 1- 4:

- (i) Name of court;
- (ii) Case numbers (BAP and bankruptcy court);
- (iii) Name of debtor(s);
- (iv) Names of appellant(s) and appellee(s);
- (v) Title of document;
- (vi) Name, address, telephone number, facsimile number, and bar number of counsel filing document, or of pro se party.

(B) **Color.** Unless filed electronically, all briefs shall have a color cover depending on the respective party. The covers of briefs shall be as follows:

- (i) appellant's brief shall have a blue cover;
- (ii) appellee's brief shall have a red cover; and
- (iii) appellant's reply brief shall have a gray cover.

(6) **Binding.** Unless filed electronically, briefs shall be firmly bound along the left margin.

(d) **Consequence of Noncompliance.** The Panel may reject or disregard any briefs that fail to comply with any of the requirements set forth in this Rule.

***Fed. R. Bankr. Rule 8011***  
***Motions***

*(a) CONTENT OF MOTIONS; RESPONSE; REPLY. A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these*

*rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.*

*(b) DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS. Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.*

*(c) DETERMINATION OF ALL MOTIONS. All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.*

*(d) EMERGENCY MOTIONS. Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.*

*(e) POWER OF A SINGLE JUDGE TO ENTERTAIN MOTIONS. A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.*

### **1st Cir. BAP L.R. 8011-1**

#### **Motion Practice**

**(a) Written Motion Required.** All motions to the BAP shall be in writing and filed with the BAP Clerk and served in accordance with 1st Cir. BAP L.R. 8008-1(c). Any brief, affidavit, or other document(s) necessary to support the motion shall be filed with the motion.

**(1) Statement Regarding Opposition.** A motion shall state whether any party to the appeal opposes the relief sought, if known.

(b) **Responses.** Unless the BAP orders otherwise, responses or oppositions to a motion shall be filed within fourteen (14) days after service of the motion.

(c) **Telephone Number and Facsimile Number.** A motion or response shall include the telephone and, if applicable, the facsimile number of the person signing the motion.

(d) **Procedural Motions.**

(1) **Clerk Authorized.** The BAP Clerk may act on the following motions without submission to the Panel:

(A) Motions relating to the production or filing of the record, transcripts, appendices, or briefs on appeal;

(B) Motions for voluntary dismissal of appeals;

(C) Motions to dismiss for want of prosecution;

(D) Motions for extension of time;

(E) Motions for leave to consolidate appeals; and

(F) Such other motions as the BAP may designate and that are subject to disposition by a single judge under Fed. R. Bankr. P. 8011(e).

(2) **Reconsideration.** A BAP Clerk order shall be subject to reconsideration by a single judge or a three-judge Panel if, within fourteen (14) days of service of notice of the entry of the order, a party adversely affected moves for reconsideration.

(e) **Substantive Motions.** The BAP Clerk shall forward substantive motions (e.g., motions for leave to appeal, to dismiss an appeal, or to reduce bond) to the appropriate judge(s) for determination. Unless the BAP otherwise directs, oral argument will not be held on motions.

(f) **Summary Disposition.** At any time, on such notice as the Panel may direct, on motion of any appellant, any appellee, or sua sponte, the Panel may:

(1) dismiss the appeal if the BAP lacks jurisdiction;

(2) dismiss the appeal, grant any other request for relief, or affirm and enforce the judgment, order, or decree below if it appears that no substantial question is presented; or

(3) reverse in the case of obvious error.

**1st Cir. BAP L.R. 8011-2**  
**Emergency Motions**

(a) **Notice.** Emergency motions and responses shall be filed and served by the quickest method available. Although documents may be filed any time through CM/ECF, the filer should not expect that the filing will be addressed outside regular business hours.

(b) **Form and Content.** A party requesting emergency determination shall plainly title its motion as one for emergency relief. The motion shall set forth a date or period within which it seeks such determination and request that the period for response be reduced to a specified date or period. The circumstances warranting emergency determination shall be fully disclosed and explained by a verified statement of counsel accompanying the motion, or by the party if not represented by counsel.

***Fed. R. Bankr. P. 8012***  
***Oral Argument***

*Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.*

*Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.*

**1st Cir. BAP L.R. 8012-1**  
**Oral Argument**

(a) **Statement Regarding Oral Argument.** Any party may include, either in the opening or answering brief, a statement limited to one-half page setting forth the reasons oral argument should, or need not, be heard (the “Statement”). The Statement shall be inserted immediately after the Table of Contents and Table of Authorities, and before the first page of the brief, and shall bear the caption “Statement Regarding Oral Argument.” The Statement shall not be considered in determining the maximum number of pages in the brief.

(b) **Waiver of Oral Argument.** Oral argument may be waived upon written stipulation of the parties, unless the Panel orders otherwise.

(c) **Telephonic Appearance.** A party may request in the Statement, or the Panel may determine, that oral argument be conducted telephonically.

(d) **Notice of Argument.** If the Panel concludes that oral argument is unnecessary, based on the standards set forth in Fed. R. Bankr. P. 8012, the parties shall be so advised. The Panel's decision to dispense with oral argument may be announced by the Panel at the time the decision on the merits is rendered.

(e) **Presentation of Oral Argument.** At oral argument the parties may expect the Panel to be familiar with the briefs and the record on appeal. The Panel will permit no more than 15 minutes per side for oral argument unless the Panel announces a different time at the commencement of argument. Counsel shall adhere to the prescribed time limit by their own devices. Where more than one counsel argues on one side of a case, it is their responsibility to assure a fair division of the total time allotted. One or more cases posing the same issues arising from the same factual context may be treated as a single case for the purposes of this Rule.

(f) **Location of Oral Argument.** The BAP generally conducts oral argument monthly in Boston. For cases originating in Puerto Rico, Maine, New Hampshire, and Rhode Island, the BAP may conduct oral argument in those districts. The parties may set forth their preference for the timing or location of oral argument in the Statement. The BAP may accommodate those preferences depending on considerations of scheduling and caseload.

***Fed. R. Bankr. P. 8013.***

***Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact***

*On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.*

***Fed. R. Bankr. P. 8014.***

***Costs***

*Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this rule.*

**Fed. R. Bankr. P. 8015**  
**Motion for Rehearing**

*Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 14 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of a subsequent judgment.*

**Fed. R. Bankr. P. 8016.**  
**Duties of Clerk of District Court and Bankruptcy Appellate Panel**

*(a) ENTRY OF JUDGMENT. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.*

*(b) NOTICE OF ORDERS OR JUDGMENTS; RETURN OF RECORD. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the clerk on disposition of the appeal.*

**1st Cir. BAP L.R. 8016-1**  
**Clerk of the Bankruptcy Appellate Panel**

- (a) Communication with the BAP.** All communication with the BAP shall be addressed to the BAP Clerk at the following address:

U.S. Bankruptcy Appellate Panel for the First Circuit  
John W. McCormack  
U.S. Post Office and Court House  
5 Post Office Sq., Suite 910  
Boston, MA 02109  
(617) 748-9650

**(b) Hours of the BAP.** The office of the BAP Clerk shall be open for business during the hours posted at the website located at <http://www.bap1.uscourts.gov> except for legal holidays as that term is defined in Fed. R. Bankr. P. 9006(a). For information regarding emergency closings, parties may telephone the Office of the Clerk of the United States Court for Appeals for the First Circuit at (617) 748-9057.

**Fed. R. Bankr. P. 8017.**  
***Stay of Judgment of District Court or Bankruptcy Appellate Panel***

*(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 14 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.*

*(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.*

*(c) POWER OF COURT OF APPEALS IS NOT LIMITED. This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.*

**Fed. R. Bankr. P. 8018.**  
***Rules by Circuit Councils and District Courts; Procedure  
When There is No Controlling Law***

*(a) LOCAL RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS.*

*(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with--but not duplicative of--Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.*

*(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.*

*(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other*

*disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.*

**1st Cir BAP L.R. 8018-1**  
**Silence of Local Rules**

To the extent the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular matter of practice, the BAP may apply the First Circuit Local Rules and the Federal Rules of Appellate Procedure.

***Fed. R. Bankr. P. 8019***  
***Suspension of Rules in Part VIII***

*In the interest of expediting decision or for other cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in*

*Part VIII, except Rules 8001, 8002, and 8013, and may order proceedings in accordance with the direction.*

***Fed. R. Bankr. P. 8020.***  
***Damages and Costs for Frivolous Appeal***

*If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.*

**1st Cir. BAP L.R. 8070-1**  
**Diligent Prosecution of Appeals**

**(a) Reporting Changes.** Attorneys who are not filing electronically and pro se parties shall immediately file with the BAP a statement of any address, telephone number, or facsimile number changes.

**(b) Dismissal for Failure to Prosecute.** If no party has elected to proceed before the district court and no appellant prosecutes the appeal in accordance with the requirements of the Federal Rules of Bankruptcy Procedure and these rules, the BAP Clerk may enter an order dismissing the appeal for failure to prosecute.

**(1) Discretion to Reinstate.** The BAP may reinstate the appeal upon a motion by a defaulting party, within fourteen (14) days of service of the order. Such a motion shall not be allowed absent a verified statement by counsel for the defaulting party or by the defaulting party, if pro se, showing special circumstances justifying the failure to comply



with the requirements of the Federal Rules of Bankruptcy Procedure or these rules.

***Fed. R. Bankr. P. 9009***  
***Forms***

*The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.*

**1st Cir. BAP L.R. 9009-1**  
**Official Forms**

The BAP adopts the 1st Cir. BAP L.R. Official Forms appended hereto and such forms shall be utilized in cases and proceedings filed with the BAP under Title 11 of the United States Code. The 1st Cir. BAP L.R. Official Forms may be amended and supplemented from time to time.

***Fed. R. Bankr. P. 9010.***  
***Representation and Appearances; Powers of Attorney***

*(a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.*

*(b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.*

*(c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.*

**1st Cir. BAP L.R. 9010-1**  
**Entry of Appearance and Admission to Practice**

(a) **Notice of Appearance.** An attorney who represents a party in an appeal, and who is not identified in the notice of appeal or a notice of substitution of attorney, shall immediately file and serve a notice of appearance containing the attorney's name, address, telephone number, bar number, and facsimile number.

(b) **Appearance.** Notwithstanding the previous subsection, an attorney who authorizes his or her name to appear on any pleading filed with the BAP has entered an appearance.

(c) **Withdrawal and Substitution.** An attorney who has entered an appearance may not withdraw without either:

(1) filing and serving a Notice of Substitution of Attorney. The notice shall contain substitute counsel's name, bar number, address, telephone number, facsimile number, and signature; or

(2) obtaining an order of the Panel allowing the attorney to withdraw. The Panel may grant such an order if an attorney files and serves on opposing counsel and the attorney's client a motion to withdraw as counsel. Any motion to withdraw shall include the client's current address and telephone number. Where an attorney appeared on behalf of a corporation, the motion to withdraw will be considered in conjunction with 1st Cir. BAP L.R. 9010-2.

(d) **Admission.** An attorney is admitted to practice before the BAP if the attorney is:

(1) admitted to practice by and a member in good standing of the United States Court of Appeals for the First Circuit;

(2) admitted to practice by and a member in good standing of a United States District Court within the First Circuit; or

(3) admitted to practice by a United States Bankruptcy Court in the case or proceeding on appeal.

(e) **Pro Hac Vice.** Any attorney not admitted to practice by the United States Court of Appeals for the First Circuit, a United States District Court within the First Circuit, or a United States Bankruptcy Court in the case or proceeding on appeal may, upon a motion, appear and practice before the BAP in a particular action at the BAP's discretion. All such motions shall have attached a supporting affidavit containing the following:

(1) the attorney's address, telephone number, and facsimile number;

(2) a listing of the court(s) to which the attorney has been admitted to practice and the date(s) of admission;

(3) a statement that the attorney is in good standing and eligible to practice in the court(s);

(4) a statement that the attorney is not currently suspended or disbarred in any jurisdiction;

(5) a statement describing the nature and status of any pending disciplinary matters involving the attorney; and

(6) a statement that the attorney is familiar with the requirements of Rule VIII of the Rules of Attorney Disciplinary Enforcement for the Court of Appeals for the First Circuit, made applicable through 1st Cir. BAP L.R. 8018-1.

#### **RULE 9010-2**

##### **Pro Se Parties**

The signature of an individual not represented by counsel on a pleading shall constitute a pro se appearance. All other parties shall appear only through counsel. Pro se parties shall ensure their appeal is perfected in a manner and within the time limits prescribed in these rules and shall prosecute the appeal with diligence.

1st Cir. BAP L.R. Official Form 1

UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT

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BAP NO. 00-000

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Bankruptcy Case No. 00-00000

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,  
Debtor(s).

---

,  
Appellant(s),

v.

,  
Appellee(s).

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APPELLANT'S STATEMENT OF ELECTION TO HAVE  
THE UNITED STATES DISTRICT COURT HEAR APPEAL

Appellant, \_\_\_\_\_, hereby elects, pursuant to 28 U.S.C. § 158(c)(1)(a),  
Fed. R. Bankr. P. 8001(e), and 1st Cir. BAP L.R. 8001-4(b)(1), to have the United States District  
Court for the District of \_\_\_\_\_ hear this appeal.

\_\_\_\_\_  
Attorney for the Appellant or Pro Se  
Appellant

Address

City, State, ZIP

Phone number

Fax number

1st Cir. BAP L.R. Official Form 2

UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT

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BAP NO. 00-000

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Bankruptcy Case No. 00-00000

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,  
Debtor(s).

---

,  
Appellant(s),

v.

,  
Appellee(s).

---

APPELLEE'S STATEMENT OF ELECTION TO HAVE  
THE UNITED STATES DISTRICT COURT HEAR APPEAL

Appellee, \_\_\_\_\_, hereby elects, pursuant to 28 U.S.C. § 158(c)(1)(B),  
Fed. R. Bankr. 8001(e), and 1st Cir. BAP L.R. 8001-4(b)(1), to have the United States District  
Court for the District of \_\_\_\_\_ hear this appeal.

\_\_\_\_\_  
Attorney for the Appellee or Pro Se  
Appellee  
Address  
City, State, ZIP  
Phone number  
Fax number

1st Cir. BAP L.R. Official Form 3

UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT

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BAP NO. 00-000

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Bankruptcy Case No. 00-00000

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,  
Debtor(s).

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,  
Appellant(s),

v.

,  
Appellee(s).

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STATEMENT REGARDING RELATED CASES  
1st Cir. BAP L.R. 8010-1(b)(3)

☐ The undersigned certifies that the following are known related cases and appeals:

Case Name

Court

Status of Case

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☐ The undersigned certifies that the undersigned knows of no related cases or appeals as that term is defined in 1st Cir. BAP L.R. 8010-1(b)(3)(A).

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Attorney or Pro Se Party

Address

City, State, ZIP

Phone number

Fax number

1st Cir. BAP L.R. Official Form 4

UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE FIRST CIRCUIT

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BAP NO. 00-000

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Bankruptcy Case No. 00-00000

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,  
Debtor(s).

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,  
Appellant(s),

v.

,  
Appellee(s).

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STATEMENT REGARDING INTERESTED PARTIES  
1st Cir. BAP L.R. 8010-1(b)(4)

☐ The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the judges of the Panel to evaluate possible disqualification or recusal.

☐ The undersigned certifies that the undersigned knows of no interested party as that term is defined in 1st Cir. BAP L.R. 8010-1(b)(4)(A).

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Attorney or Pro Se Party

Address

City, State, ZIP

Phone number

Fax number